



Delhi Policy Group

Advancing India's Rise as a Leading Power



DPG POLICY BRIEF

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Cover Photographs:

WTO Director General Okonjo-Iweala meets with Piyush Goyal, India's Minister of Commerce and Industry, at the WTO's 12th Ministerial Conference on June 12, 2022.

Indian Minister of Commerce and Industry, Piyush Goyal, addressing the session on Challenges facing the Multilateral Trading System, at the WTO's 12th Ministerial Conference on June 12, 2022.

Source: WTO

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WTO Ministerial revives hopes for its return to full functionality

by
V. S. Seshadri

The WTO may well get back to its full range of activities, including dispute settlement, soon. Trade ministers from its 164 members managed to arrive at a consensus at the recently held twelfth ministerial - by extending their meeting by two days - on several pending issues, including reforming the functioning of the body. Of course, not all issues could be resolved, such as the proposals on agriculture. Some items were only partially addressed, such as an agreement on fisheries subsidies or the IPR waivers for dealing with COVID-19. But as noted by Director General Ngozi Okonjo-Iweala, not in a long while has the WTO seen such a significant number of multilateral outcomes.

The final package agreed at the Ministerial included the following elements¹:

- An agreement on marine fishery subsidies, after almost 21 years of negotiations that will prohibit subsidies being given for illegal, unreported and unregulated fishing and fishing of overfished stocks. There will also be a ban on subsidies being given for fishing on the unregulated high seas. A decision on proposals that sought to prohibit subsidies that had led to overfishing and overcapacities, however, had to be deferred. India and several developing countries sought more time to build their capacities and the specific needs of artisanal fishermen. The meeting could not bridge the gaps here for which more negotiations will be held. In the interim, there will be no restriction on subsidies given to fishing in the coastal country's EEZ, but notification requirements will kick in.
- An agreement reached on a IPR waiver in respect of COVID-19 vaccines, but not on diagnostics and therapeutics on which further negotiations will be held in the next six months. Even on vaccines, the agreed deal is limited to easing the procedures for WTO developing country members to avail of the compulsory licensing route in respect of patents on necessary ingredients and processes for making the vaccine. There will now be no requirement for prior efforts to be made to obtain authorisation from the rights holder. There will also be no restriction on vaccines so manufactured to be exported to other developing countries. Other conditions and notification requirements will, however, continue. India could be a beneficiary. China will not use the facility.

¹ See https://www.wto.org/english/thewto_e/minist_e/mc12_e/documents_e.htm

- The moratorium on levying customs duties on electronics transmissions has been further extended, but only till the next ministerial meeting or March 2024, whichever is earlier. Meanwhile there will be intensification of discussions on this issue, including on studying its impact. India and a few other developing countries had raised this issue and had preferred termination of the moratorium.
- A ban has been introduced on export prohibition or restrictions being placed on foodstuffs purchased by the World Food Programme (WFP) for non-commercial humanitarian purposes. This shall, however, not prevent countries from adopting measures for ensuring their food security. This decision could constrain India's flexibility to some extent, but only for what is really an unexceptionable cause.
- To undertake reform of all the functions of the WTO to address the challenges it is facing. The work is to be undertaken by the WTO General Council and its subsidiary bodies, is to be member driven, and appropriate decisions are to be submitted to ministerial conference. Discussions are also to be held with a view to having a fully and well-functioning dispute settlement system by 2024.
- Apart from the foregoing outcomes, the Ministerial meeting also adopted three declarations on the following topics: a) WTO response to the COVID-19 pandemic and preparedness for future pandemics that inter alia emphasises importance of maintaining a stable and predictable trading environment and urges that emergency trade measures to tackle COVID-19 are targeted, temporary, transparent and proportionate ; b) Emergency response to food insecurity in the context of rising prices of food and agricultural items and their production inputs, which again emphasises that emergency measures to address food security concerns are temporary and targeted and take into account possible impact on other members; and c) Response to modern challenges relating to sanitary and phytosanitary measures (SPS) which provides a detailed set of themes to address in the Work Programme of the SPS committee in implementing the WTO SPS agreement.

Has the Ministerial outcome adversely affected India's interests in any way? If we look at it from a defensive interest, the Minister of Commerce and Industry

Piyush Goyal was right in saying² that as the Indian delegation returned to India, there was no issue on which it had to be (immediately) concerned. No action has been taken by the Ministerial that would affect India's public stockholding (PSH) for food security and MSP programmes in relation to agriculture. Similarly no restrictions have been placed on extension of assistance towards artisanal and traditional marine fishery development. There could be some benefit if India and its Pharma industry could still use the IPR waiver for vaccines for both domestic requirements and export of vaccines, although it may have come rather late in the day. On the work relating to WTO reform, the Minister said that this will make the WTO more contemporary and foster global trade through transparent means. The work will be undertaken keeping core principles of the WTO, including of taking decisions by consensus, providing special and differential treatment to developing countries, and the UN Sustainable Development Goals.

It could also be said that in the wake of several global developments, including COVID-19 and the Ukraine crisis, which have adversely affected international trade in so many different ways, and in the context that the WTO itself had become fractured and dysfunctional in recent years, and that the normally biennial Ministerial was being held after five years, a successful outcome of the meeting was sorely needed. With 164 nations having to decide by consensus, not all demands of each member can possibly be met. From that perspective, the package of deliverables decided on was what could be managed. India also appears to have contributed to reaching the consensus by not insisting on all its demands that had been put across in the Minister's statement at the plenary.

That said, the question still arises whether there could have been even better outcomes from India's perspective. Few observations can be made here. One is the total absence of any reference in the final package to the public stockholding issue. The Minister had highlighted in his statement to the plenary that a permanent solution on this issue, which has already been delayed, should be the top most priority of the Ministerial. The Africa Group, the ACP countries and the G-33 group on agriculture that included India had also jointly circulated a proposal on June 6 in this regard³. Yet the issue finds no specific mention except in the concluding statement of Director General Ngozi⁴, who lamented that despite the vital importance of agriculture, differences among members on some issues, including public stock holding

² <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1834766>

³ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W4.pdf&Open=True>

⁴ https://www.wto.org/english/news_e/spno_e/spno27_e.htm

for food security purposes, domestic support, cotton, and market access meant that a consensus could not be achieved on a roadmap for the future.

Secondly, the paragraph on undertaking WTO reform in the outcome document⁵ is perhaps rather brief and open about its scope, while some precision and the intended direction could have been attempted. Reading this alongside EU Commission Vice President Dombrovskis' statement⁶ calling for root and branch reform of the WTO makes one wonder what actually lies ahead. While USTR Tai's statement that the WTO must avoid being overly prescriptive at the outset has some validity in inviting new ideas, there can be little doubt that India will need to exercise due diligence and caution and come up with well thought out ideas along with other developing countries on how to take this forward. There will be much at stake here.

Third, the decision that there should be no export prohibitions/restrictions on WFP purchases could have had little more balance since it imposes an obligation on countries. Exporting from public stockholding could have been specifically permitted in such cases. The June 6 proposal by a number of developing countries earlier referred to also carries a provision in this regard suggesting substantial support.

Fourth, a number of issues have been kicked down the road for future decision. Apart from the issues already mentioned in the foregoing, fisheries subsidies in respect of overcapacity and overfishing are also of importance to India which will now become part of the next package of decisions for consideration. Before overloading this further with the issue relating to zero customs duties on electronic transmissions, India will need to carefully study the cost-benefit of seeking to revoke the moratorium and not just go by estimates of notional losses in its absence. The possible impact on the Indian IT services industry needs a hard look. The very practicality of collecting revenues from such transmissions is another.

What seemed interesting about the Ministerial was the apparent lack of initiatives from the two leading trading nations of the world, China and the US, who have still not resolved their bilateral trade issues. China appeared more content to ensure it did not get singled out to be deemed ineligible to use the facility created by the IPR waiver decision on vaccines, but it is to be its voluntary choice to forego the option. The Chinese Commerce minister also made clear in his statement to the plenary⁷ that "China's status as the world's

⁵ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W16R1.pdf&Open=True>

⁶ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/ST22.pdf&Open=True>

⁷ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/ST35.pdf&Open=True>

largest developing country remains unchanged. As we uphold China's position as a developing country, we will approach special and differential treatment voluntarily and practically”.

USTR Tai was also somewhat selective in the issues addressed by her in the plenary⁸ and in welcoming the final outcome. There was, for example, no reference or suggestion on getting the dispute settlement body back to full functioning when the US was largely responsible for what happened to it. Perhaps US domestic political compulsions were at work here.

If one were to look at who may have emerged well from the Ministerial, it is certainly Director General Ngozi who could rally all the disparate groups and finally manage to get a reasonable outcome. Even if not perfect, if the package is well followed up, it could get the WTO back to being active in all of its three functions - of monitoring, negotiating and dispute settlement. Among the members, the EU has certainly done well in achieving many of its aims, including in keeping the IPR waiver narrowed down to only vaccines, which has also been restricted further to simply easing some procedures for usage under the compulsory licensing route. With the WTO reform decision also more on the lines of the EU's preference, it can now be expected to build on its interests further.

On such matters, however, it is not always who may have succeeded more, but whether our national interests have been sufficiently safeguarded and advanced. In this regard, India has certainly made some progress, but much work remains to be done between now and the next Ministerial.

⁸ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/ST16.pdf&Open=True>



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